Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Effect of Foreign Mobile	)	Docket No. 04-398
Termination Rates on U.S. Consumers	)	FCC 04-247
	)	

REPLY COMMENTS OF SOFTBANK BB CORPORATION

Softbank BB Corporation ("Softbank BB"), by its attorneys, hereby replies to the comments submitted in response to the Commission's Foreign Mobile Termination Rate Notice of Inquiry ("NOI").[1]

As discussed below, the record demonstrates that the Commission should collect relevant data regarding foreign mobile termination rates in Japan to determine the level of competitiveness in the Japanese mobile communications market and the degree to which mobile termination charges exceed costs and harm U.S. consumers.[2] If the Commission determines that the market is not sufficiently competitive, it should apply its international settlement policy ("ISP") to U.S. communications to and from mobile networks in Japan. More importantly, the Commission (along with other U.S. governmental entities) should encourage the Government of Japan to initiate and implement plans to provide for a more competitive environment for wireless services.

[1] *See In the Matter of the Effect of Foreign Mobile Termination Rates on U.S. Consumers*, Notice of Inquiry, 19 FCC Rcd 21395 (2004) ("NOI").

[2] To the extent some commenters question FCC's jurisdiction over this matter, it is clear that the Commission has jurisdiction to inform itself of whether U.S. customers are being charged non-competitive rates for calls terminating to foreign mobile phones. *See, e.g.*, *Cable & Wireless v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

DISCUSSION

The comments submitted provide support for Softbank BB's view that the Commission should proceed with an investigation into the high termination rates charged to U.S. consumers for calls to mobile networks in Japan. The positions taken by the Government of Japan and NTT DoCoMo ("DoCoMo") do not contradict Softbank BB's analysis of the competitive failure of the Japanese mobile market. As Cable & Wireless noted, in Calling Party Pays ("CPP") regimes foreign mobile network operators "have market power over call termination" and, even when there are two or more such operators, there may not be genuine competition.[3] Given that such a situation exists currently in Japan, the Commission should consider taking steps, set forth by Softbank BB in its initial comments and herein, to encourage competition in Japan's mobile communications market.

I. The Comments Confirm that the FCC Should Investigate Foreign Mobile Termination Rates in Japan.

Softbank BB demonstrated in its initial comments that there is evidence that foreign termination rates charged by Japan's mobile network operators are non-competitive and that the market evidences certain characteristics of markets lacking effective competition.[4] Other parties agree.[5] For example, MCI noted that the mobile

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[3] Comments of Cable & Wireless at 3; *see also* Comments of CompTel/ASCENT at 3-4 (explaining that mobile network operators are monopolistic, and that the competitiveness of the retail market is irrelevant to determining whether monopoly prices are charged by a mobile operator).

[4] Comments of Softbank BB at 4-9 and Ex. 7.

[5] Vodafone was the only party commenting on mobile termination rates in Japan that claimed the rates charged for calls originating outside of Japan are far less than the rates charged for calls originating in Japan. S*ee* Comments of Vodafone at 12. Vodafone's claim, however, is without citation or support and is contrary to Softbank BB's experience It also does not establish that either set of termination rates is competitive. Interestingly, DoCoMo did not even make Vodafone's assertion.

termination rates in Japan are 393% greater than fixed line termination rates.[6] Furthermore, CompTel/ASCENT explained that excessive mobile termination rates are particularly a problem in Japan.[7] This information, coupled with the presumption, as noted by Cable & Wireless, that Japan's foreign mobile network operators have market power, supports Softbank BB's recommendation for the FCC's initiating a factual inquiry into foreign mobile termination rates in Japan.

A. There is a Lack of Information Regarding the Mobile Termination Rates Charged in Japan.

Although a number of parties provided some information regarding foreign mobile termination rates in Japan, the information does not provide the data that is useful to the Commission. Rather, the data is incomplete and not presented in a systematic manner, as suggested by Softbank BB.[8] Moreover, some parties presented rate information without providing the Commission with the methodology used to calculate the rates, making the record unclear.

The information provided by the Government of Japan and DoCoMo is striking for what is excluded. Beyond stating that mobile termination rates in Japan have declined over the years, a fact Softbank BB does not dispute, neither the Government of Japan nor DoCoMo provides rate information responsive to the NOI. The Government of Japan merely points to studies that do not provide adequate information regarding foreign mobile termination rates in Japan.[9] DoCoMo, in turn, offers information regarding only a "weighted average rate" charged for all mobile calls terminating to its network during

[6] Comments of MCI at 28. MCI also asserted that truly competitive mobile termination rates should be in the range of $0.04-0.07/minute, significantly less that the "weighted average" rates DoCoMo provided.
[7] Comments of CompTel/ASCENT at Attachment 1, p.2.
[8] *See* Comments of Softbank BB at Ex. 7 (information requests).
[9] Comments by the Government of Japan at n.2 and n.3.

two years,[10] which does not explicitly make clear the rates charged to U.S. carriers for calls originating from the United States. In fact, it is unclear what the "weighted average rate" includes, as DoCoMo does not define the term or explain its method of calculating the rate.[11] Similarly, Vodafone provides a rate for the "foreign mobile termination rate premium" in Japan, which it defines as the mobile termination rate less fixed termination rate.[12] However, it does not provide the actual foreign mobile termination rate and, without knowing the fixed termination rate, that rate cannot be determined.[13] Thus, there is still much information that the FCC needs regarding Japan's mobile termination market.[14]

B. The Information Provided Implies that There is No Cost Justification for the Mobile Termination Rates Charged in Japan.

It is significant that no party has provided sufficient information regarding the cost basis of mobile termination rates in Japan, which Softbank BB attributes to the fact that there is none. The fact that DoCoMo's foreign termination rates have declined or that its rates are lower than rates charged in other countries – indicia DoCoMo claims of the fairness of its rates – does not demonstrate that its rates are cost-based, competitive or non-discriminatory to U.S. consumers. When there is a large increase in calls terminating at mobile phones, one would expect that termination rates would decrease. The decrease

[10] Comments of NTT DoCoMo, Inc. at 7-8.

[11] For example, DoCoMo's "weighted average rate" may include discounted termination rates it charges to corporate groups or large customers, rates that are not offered to U.S. carriers. *See* Comments of CompTel/ASCENT at 6 (explaining that many foreign mobile network operators offer discounted rates to special customers).

[12] Comments of Vodafone at 33.

[13] *Id.*

[14] Some rate information provided also is inconsistent. For example, Vodafone's "foreign mobile termination rate premium," defined as the mobile termination rate less fixed termination rate, is approximately $0.11, which presumably means that the actual foreign mobile termination rate is greater than $0.11. Comments of Vodafone at 33. In the NOI, however, the Commission notes that the termination rates in Japan are approximately $0.11. NOI at B-5. For this reason as well, the FCC should proceed with its inquiry to clarify the data provided.

in rates in Japan could indicate merely that costs are spread over a much larger customer base, rather than that the rates have become more competitive. Indeed, as MCI points out,[15] even if Japan's retail termination rates were competitive, it does not follow that the wholesale rates are competitive. Although DoCoMo states that its rates are lower than some charged in Europe, a better comparison would be to the rates charged in the United Kingdom, which are regulated based on cost.

It also is worth noting that neither the Government of Japan nor DoCoMo claim, as other parties have with respect to other countries, that government-mandated international rate subsidies of local rates, universal service obligations, surcharges, or similar reasons account for the great disparity between fixed and mobile termination rates in Japan.[16] CompTel/ASCENT, moreover, noted that Japan's Ministry of Internal Affairs and Communications ("MIC") allowed interconnection rates to increase in 2003 even though there was no change in costs, indicating that these rates, which are included in Japan's termination rates, are not cost oriented.[17] Such facts further indicate that the rates in Japan are not cost-based and that the Commission should look into the matter further.

[15] Comments of MCI Corp. at 14; *see also*, Comments of CompTel/ASCENT at 5.
[16] As Telefonica noted, the setting of rates by a national regulatory authority may prevent an operator from charging competitive mobile termination rates. Comments of Telefonica at 4.
[17] Comments of CompTel/ASCENT at Attachment 1, p. 18.

II. The FCC Should Work with the Japanese Government to Encourage Effective Competition.

The parties generally agreed that consumers are protected when there is effective competition and effective regulatory oversight by independent regulatory authorities.[18] Under such circumstances, mobile termination rates would decrease and consumers would benefit. However, the information presented in this proceeding indicates that neither of these two factors is present in Japan.

In Softbank BB's initial comments, it requested that the FCC join with other U.S. agencies to work with the Government of Japan to encourage more mobile competition by opening its spectrum licensing procedures.[19] As effective competition leads to lower prices, this is the best means of reducing mobile termination rates in Japan for all consumers, including U.S. consumers.[20] One important fact regarding the Japanese mobile market remains clear: there is room for additional competitors and the resulting increase in competition should bring about a decrease in foreign mobile termination rates.[21] Currently, however, the Government of Japan is using a closed-door process and is working on minimizing rather than maximizing competition. The facts presented by Softbank BB indicate that MIC places the interests of incumbent carriers ahead of the interests of consumers. This policy was reaffirmed this week, when MIC announced its final decision to allocate newly available 800 MHz spectrum to the incumbent carriers

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[18] *See* Comments of Bell South at 12; Comments of Vodafone at 23-24; *see also* Comments of CompTel/ASCENT at 9 (noting the failure of national regulatory authorities to make retail foreign mobile termination rates truly competitive).
[19] Comments of Softbank BB at 11.
[20] Although some commenters argue that FCC should not address foreign mobile termination rates because there is no discrimination to U.S. consumers, certainly the Commission should be concerned if U.S. consumers are being charged higher rates than they should due to ineffective competition.
[21] Softbank recently obtained information indicating that Japan's incumbent mobile carriers have lost almost 700,000 2G subscribers in one month, another indication that there is room on 800 MHz for additional carriers.

rather than new entrants.[22] The FCC needs to join with other U.S. agencies to ensure that MIC processes are fair and transparent and that MIC provides even-handed regulatory oversight of the telecommunications industry in Japan.[23] As noted in Softbank BB's initial comments, both the Office of the United States Trade Representative and the United States Embassy in Japan have raised concerns regarding MIC's lack of transparency and independence.[24]

CONCLUSION

For the reasons stated above, as well as those set forth in its initial comments, Softbank BB urges the Commission to seek further information on the competitiveness of the mobile market in Japan, as outlined in the requests submitted by Softbank BB with its initial comments. Further, Softbank BB urges that FCC, in conjunction with the Departments of State and Commerce, and the USTR, engage in bi-lateral discussions with the Japanese government to encourage that government (a) to make its processes more transparent, (b) to conduct and publish studies on the competitiveness of its telecommunications markets, (c) to make rates publicly available and, (d) more generally,

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[22] This decision is especially striking given that the incumbents use 800 MHz to provide 2G services and, as noted, Japanese consumers appear to be moving away from those services.

[23] Nothing in the submitted comments counters Softbank BB's assertions that Japan lacks a fair and independent regulatory authority.

[24] Comments of Softbank BB at 9.

to take practical steps to foster new competitive entry into the mobile communications market in Japan.

Respectfully submitted,

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